REMARKS

This Response addresses the issues raised by Examiner in the Office Action mailed September 29, 2003. Initially, Applicants would like to thank the Examiner for the careful consideration given this case. The Claims were 15-53. Non-elected Claims 15-40 were previously withdrawn without traverse. No new matter has been added by the amendments. Thus, Claims 41-53 are pending in this case all to more clearly and distinctly claim Applicants' invention. Applicants respectfully request entry of the amendments as they place the application in condition for allowance or in better condition for possible appeal.

Rejection Based On Obviousness-Type Double Patenting

The Examiner rejects Claims 41-53 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1, 2 and 20 of co-pending Application No. 09/611,286. The Examiner claims that although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the present application overlap the published claims and thus would be rendered obvious.

Since this is a provisional obvious-type double patenting rejection, Applicants respectfully submit that Applicants will not address the issue of a Terminal Disclaimer until subject matter is allowed by the Examiner.

Rejection Based On Dori In View Of Cooper, References Of Record In The Parent Application, Field And Merck Manual Under 35 U.S.C. § 103(a)

The Examiner rejects Claims 41-53 under 35 U.S.C. § 103 (a) as being unpatentable over WO93/11140 to Dori in view of U.S. Patent No. 4,242,359 to Cooper et al, references of record in the parent application and Field and Merck Manual. Applicants respectfully traverse this rejection.

The Examiner acknowledges that Dori does not teach the method of prophylaxis for Human Immunodeficiency Virus (HIV) infection by topically administering the metallo-organic cobalt compound 96 to the site on the subject with is exposed to HIV. The Examiner

also concedes that Dori also does not expressly teach the method of using a condom as an applicator to topically apply the compound 96. The Examiner looks to Cooper to cure this deficiency by arguing that Cooper teaches a method of topical administration of a medical agents by applicators including a condom is known in the art. The Examiner cites to Field for teaching the common viral pathogens in humans and the Merck Manual for teaching employing anti-infective agents in anti-microbial chemoprophylaxis is a common practice in the pharmaceutical field. Thus, the Examiner concludes that it would have been obvious to one skilled in the art to apply the teachings of Cooper, Field and Merck to the method of treating viral infection by topically administering the metallo-organic cobalt compounds of Dori. Applicants respectfully disagree.

To establish obviousness of a claimed invention, all claim elements must be disclosed, taught or suggested by the prior art. We agree with the Examiner that Dori does not teach the method of prophylaxis for Human Immunodeficiency Virus (HIV) infection by topically administering the metallo-organic cobalt compound 96 to the site on the subject which is exposed to HIV and the method of using a condom as an applicator to topically apply the compound 96. Dori teaches therapeutic use of metallo-organic cobalt compounds to treat subjects with viral infections not to prevent viral infections but to treat viral infections. See Specification on page 1, lines 17-20. In addition, Dori specifically states on page 6, lines 5-9, that the purpose of the anti-viral composition is "to suppress the replication and/or abort the infective life cycle of the virus causing the infection." Dori does not disclose the use of antiviral compounds to prevent infection prior to a virus infecting the actual cell. Instead Dori discloses solely to use metallo-organic cobalt compounds to treat subjects with viral infection. Further, although Dori teaches that the anti-viral composition can be topically administered, Dori does not mention the use of a condom as an applicator. Thus, Dori does not teach the method of prophylaxis for HIV infection by topically administering the metallo-organic cobalt compound of the present invention.

Cooper teaches a method for killing mammalian spermatozoa. Although Cooper may teach using a condom as an applicator, Cooper does not teach a method for preventing HIV infection in a subject by topically applying a metallo-organic cobalt compound. Thus, Cooper does not teach the method for preventing HIV infection of the present invention.

In regards to Fields, Fields discloses some pathogenic viruses of humans. Although Fields mentions HIV as a type of pathogenic virus, Fields does not disclose how to prevent HIV infection. Thus, Field does not teach the method of prophylaxis for HIV infection by topically administering the metallo-organic cobalt compound of the present invention.

In regards to Merck Manual, the Examiner claims that the Merck Manual teaches employing anti-infective agents in anti-microbial chemoprophylaxis as common practice in the pharmaceutical field. However, the Merck Manual does not specifically teach the method of using metallo-organic cobalt compound for preventing HIV infection of the present invention. Thus, the Merck Manual does not teach the method of prophylaxis for HIV infection by topically administering the metallo-organic cobalt compound of the present invention.

In contrast, the present invention teaches that topical application of metallo-organic compounds can prevent Human Immunodeficiency virus and or Human Papilloma virus infection. The examples exhibited in the present invention is consistent with this purpose. In example 2 of the present invention, stock solution of viruses were treated for one hour with an equal volume of Compound 96. Then, the virus solutions were diluted a thousand fold. These virus solution were then mixed with an equal volume of Peripheral Blood Mononucleocyte cells for a final dilution of the virus and drug of 1 to 4,000. This resulted in a final virus concentration of 1 ng/ml. After the infected cultures were incubated for 4 days for M-tropic (NL-HX-ADA) and 8 days for T-tropic (NL-HX). The results show that the T-tropic and M-tropic were completely inactivated even at the lowest concentration of drug tested. This shows that the prophylaxis ability of the drug and the uniqueness of the method of the present invention.

Accordingly, Dori does not teach the use of antiviral compounds to prevent infection prior to a virus infecting a subject. Also, Cooper, Fields and Merck Manual do not teach the method of preventing HIV infection by topically administering the metallo-organic cobalt compound of the present invention. Thus, the Applicants believe that the present invention is not obvious over the teaching of Dori in view of Cooper, references of record in the parent application, Field and Merck Manual since Dori, Cooper, reference of record in the parent application, Field and/or Merck Manual does not teach, disclose or suggest the present

claims. Moreover, one skilled in the art would find nothing in Dori, Cooper, reference of record in the parent application, Field or Merck Manual alone or in combination that would disclose, teach or suggest the claimed invention or any reason for making it. Further, there is no motivation to combine the references in such a way to get the claimed invention. Therefore, an obvious rejection under 35 U.S.C. §103 (a) is improper.

In view of the remarks presented herein, it is respectfully submitted that the present application is in condition for final allowance and notice to such effect is requested. If the Examiner believes that additional issues need to be resolved before this application can be passed to issue, the undersigned invites the Examiner to contact him at the telephone number provided below.

Respectfully submitted,

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By _____

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